

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

---

**JOHNATHAN JOHNSON,**

**Plaintiff,**

**v.**

**9:14-CV-0803 (BKS/TWD)**

**JEFF MCKAY, Deputy Commissioner of  
DOCCS, et al.,**

**Defendants.**

---

**Appearances:**

**Johnathan Johnson  
89-A-1042  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, NY 12953  
Plaintiff, pro se**

**Ryan L. Belka, Esq.  
Hon. Eric T. Schneiderman  
Office of New York State Attorney General  
Main Place Tower  
350 Main Street  
Suite 300A  
Buffalo, NY 14202  
Attorney for Defendants**

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff Johnathan Johnson, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Upstate Correctional facility. Dkt. Nos. 5, 24, 34. In his most recent complaint, the Second Amended Complaint, Plaintiff alleges that the Defendants violated the First Amendment by: (1) denying him access to

the courts; and (2) retaliating against him for filing lawsuits and grievance complaints. Dkt. No. 34. On November 3, 2015, Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. Dkt. No. 36. Plaintiff's response was filed on November 18, 2015. Dkt. No. 38. This matter was assigned to United States Magistrate Judge Thérèse Wiley Dancks who, on June 9, 2016, issued a Report-Recommendation and Order recommending that Defendants' motion to dismiss be denied. Dkt. No. 39. Magistrate Judge Dancks advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 39, p. 18. No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Report-Recommendation is adopted in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation (Dkt. No. 39) is **ADOPTED** in its entirety; and it is further


**ORDERED** that Defendants' motion to dismiss (Dkt. No. 36) is **DENIED**; and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with

the Local Rules.

**IT IS SO ORDERED.**

**Dated: July 27, 2016**

  
Brenda K. Sannes  
Brenda K. Sannes  
U.S. District Judge